SENATE JOINT RESOLUTION 21-006

BY SENATOR(S) Zenzinger and Fenberg, Bridges, Coleman, Fields, Ginal, Gonzales, Hansen, Jaquez Lewis, Kolker, Lee, Moreno, Pettersen, Story;
also REPRESENTATIVE(S) Esgar and Garnett, Amabile, Arndt, Bacon, Benavidez, Bernett, Bird, Caraveo, Cutter, Duran, Exum, Froelich, Gonzales-Gutierrez, Gray, Herod, Hooton, Jackson, Jodeh, Kennedy, Kipp, Lontine, McCluskie, McLachlan, Michaelson Jenet, Mullica, Ortiz, Ricks, Roberts, Sirota, Snyder, Sullivan, Tipper, Titone, Weissman, Woodrow, Young.

CONCERNING A REQUEST TO THE SUPREME COURT OF THE STATE OF COLORADO TO RENDER ITS OPINION UPON A QUESTION REGARDING HOUSE BILL 21-1164.

WHEREAS, Article IX, section 2 of the Colorado Constitution mandates that the Colorado General Assembly must "provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state"; and

WHEREAS, Pursuant to that mandate, the General Assembly enacted a school finance system to fund public schools through a combination of state-appropriated money and local property tax revenue collected from mill levies imposed by school districts; and

WHEREAS, In 1992, the Colorado voters approved article X, section 20 of the Colorado Constitution (TABOR), which, among other things, imposes a property tax revenue limit on all districts that impose property taxes, including school districts, unless the voters in a district approve a revenue change to allow the district to keep property tax revenue that exceeds the limit; and

WHEREAS, In 1994, the General Assembly passed and the Governor signed the "Public School Finance Act of 1994", article 54 of title 22,

Colorado Revised Statutes, (1994 Act), which, like previous school finance acts, creates a shared obligation between school districts and the state to fund public education in Colorado; and

WHEREAS, The 1994 Act requires each school district to annually levy a certain number of property tax mills, as determined under the 1994 Act, to fund the local share of the school district's total program funding, which levy is referred to as the "total program mill levy"; and

WHEREAS, The 1994 Act, as enacted, set limits on each school district's total program mill levy, including limiting a school district to levying no more than the number of mills that the district could levy under its TABOR property tax revenue limit; and

WHEREAS, As the Colorado Supreme Court recognized in *Mesa County Bd. of County Comm'rs v. State*, 203 P.3d 519 (Colo. 2009), since 1994, nearly every school district in Colorado has obtained voter approval to permanently waive its TABOR property tax revenue limit; and

WHEREAS, In recognizing the elections at which voter approval was given, the Colorado Supreme Court concluded that "[t]he waiver elections were effective immediately and gave the school districts, which are the relevant taxing authorities, the right to receive property tax revenue above the [revenue] limit." *Mesa County*, 203 P.3d 519, 535; and

WHEREAS, Despite the waiver elections, the Colorado Department of Education (CDE) continued to instruct each school district to limit its total program mill levy to no more than the number of mills that could be imposed under the school district's TABOR property tax revenue limit as if the school district's voters had not waived the limit; and

WHEREAS, In *Mesa County*, the Colorado Supreme Court implied that CDE acted without authority in mandating that school districts ignore the waiver elections and reduce their total program mill levies: "However, this result [i.e., that school districts were no longer subject to the property tax revenue limit when determining their mill levies under the 1994 Act] was not implemented because of the manner in which the CDE administered the School Finance Act. Rather than recognizing that all limits had been waived immediately after each successful election occurred, the CDE continued to advise school districts to certify mill

levies in accordance with the property tax revenue limit ..., and to reduce their mill levies when property tax revenues rose faster than the revenue limits permitted." *Mesa County*, 203 P.3d 519, 535; and

WHEREAS, Between 1998 and 2007, CDE, without authority to do so, instructed over 100 school districts to reduce their total program mill levies to remain under their TABOR property tax revenue limits, even though waived by the school districts' voters; and

WHEREAS, These unauthorized reductions have had a cumulative effect, because each unauthorized mill levy reduction created a new, lower limit on a school district's total program mill levy, above which the 1994 Act would not allow the mill levy to increase; and

WHEREAS, As a result, the statewide average total program mill levy imposed by school districts decreased from 38 mills in 1994 to 21 mills in 2006, causing school districts to lose billions of dollars in property tax revenue for schools, which the state then was required to replace with state revenue; and

WHEREAS, This significant reduction in the amount of property tax revenue contributed to total program funding by school districts has severely impacted the state's ability to adequately fund public schools; and

WHEREAS, During the 2020 regular legislative session, the General Assembly, in the exercise of its plenary authority, passed, and the Governor signed, House Bill 20-1418, which, in part, is designed to correct the unauthorized reductions in school district total program mill levies; and

WHEREAS, Beginning in the 2020 property tax year, House Bill 20-1418 requires most school districts to correct their total program mill levies to reverse the previous, unauthorized reductions; and

WHEREAS, While the total program mill levies were corrected in the 2020 property tax year, school district taxpayers did not in fact pay more property taxes due to this correction because House Bill 20-1418 also requires each school district for which the total program mill levy is corrected to grant a temporary property tax credit for the number of mills

by which the mill levy is increased above the number of mills levied in the 2019 property tax year; and

WHEREAS, During the 2021 regular legislative session, the General Assembly, in the exercise of its plenary authority, introduced House Bill 21-1164, which directs the CDE to adopt a correction schedule to incrementally implement the total program mill levy corrections by requiring school districts to reduce the temporary property tax credits by no more than one mill per year beginning in the 2021 property tax year, resulting in complete correction of the mill levy rates in all impacted school districts by 2040; and

WHEREAS, House Bill 21-1164 was passed on third reading by the House of Representatives on March 16, 2021, was passed by the Senate on second reading on March 19, 2021, and now awaits final passage by the Senate; and

WHEREAS, With the implementation of the correction schedule required by House Bill 21-1164, 127 school districts will actually impose a higher number of mills on their taxpayers for the total program mill levy for the 2021 property tax year than was imposed for the 2020 property tax year due to the correction; and

WHEREAS, Substantial questions have been raised about the constitutionality of House Bill 21-1164 regarding:

(1) The underlying assumption that the General Assembly may correct the CDE's unauthorized mill levy reductions by requiring school districts to reset their total program mill levies to the levels at which the levies would have been but for the unauthorized reductions, without requiring a school district to obtain prior voter approval under article X, section 20(4) of TABOR; and

(2) The fact that, in implementing the correction of its total program mill levy by reducing the temporary property tax credit in accordance with the correction schedule, a school district is assessing a "mill levy above that for the prior year", which normally requires prior voter approval under article X, section 20(4) of TABOR; and

WHEREAS, The issues raised by House Bill 21-1164 are strictly legal

issues involving the interpretation and construction of the 1994 Act and article X, section 20 of the Colorado Constitution, and no factual issues are likely to arise in the context of a private suit that would enhance the Colorado Supreme Court's ability to adjudicate these issues; and

WHEREAS, Unless the Colorado Supreme Court resolves these constitutional questions in the context of an interrogatory proceeding:

(1) The state and school districts will lack certainty as to the appropriate level of school districts' total program mill levies and the concomitant level of state funding required for public education beginning in the 2021-22 fiscal year;

(2) School districts, in reducing the temporary property tax credits, and thereby imposing a de facto increase in the school districts' total program mill levies, will risk the costs and delays of legal action and the imposition of substantial refund obligations under TABOR if the increases in total program mill levies are found to be unconstitutional. These refund obligations would substantially impact school districts' already strained finances; and

(3) Individual lawsuits brought against multiple school districts by taxpayers who are required to pay more in school district property taxes due to the reductions in the temporary property tax credits would create substantial unnecessary costs for and confusion among school districts and taxpayers. The many potential lawsuits could result in a confusing patchwork of inconsistent district court decisions, requiring some school districts to reduce their temporary property tax credits and enjoining others from doing so. This would result in unequal treatment of similarly situated taxpayers around the state, inconsistent with the thorough and uniform requirements specified in article IX, section 2 of the Colorado Constitution. Seeking a final resolution of these issues from the Colorado Supreme Court would force taxpayers and school districts to expend significant additional resources; and

WHEREAS, The General Assembly has elected to submit this interrogatory by Joint Resolution adopted by the two houses to demonstrate to the Colorado Supreme Court that both houses concur in the importance of the issue set forth below and the urgency of the situation described in this Joint Resolution; and

WHEREAS, If, before the adjournment sine die of the first regular session of the Seventy-third General Assembly, the Colorado Supreme Court determines that, to correct the prior unauthorized reductions in school district mill levies, school districts may be required to decrease the temporary property tax credit required in House Bill 20-1418 in accordance with a correction schedule, resulting in a de facto increase in the total program mill levy, without obtaining prior voter approval, House Bill 21-1164 will likely pass the Senate on third reading and be signed into law by the Governor; now, therefore,

Be It Resolved by the Senate of the Seventy-third General Assembly of the State of Colorado, the House of Representatives concurring herein:

That, in view of the premises, there is an important question as to the constitutionality of House Bill 21-1164, and it is the judgment of the Senate and the House of Representatives that the question of the constitutionality of House Bill 21-1164 is a matter of extreme importance and public interest affecting the overall level of funding for public education and property tax equity among school districts. Further, it is essential that the constitutionality of House Bill 21-1164 be determined as soon as possible to enable the state and school districts to finalize the budgets for the 2021-22 fiscal year and enable school districts to determine with confidence the total program mill levies to be imposed for the 2021 property tax year. The Senate and the House of Representatives concur that a solemn occasion within the meaning and intent of article VI, section 3 of the Colorado Constitution has arisen and, accordingly, respectfully request the Colorado Supreme Court to render its opinion upon the following question:

> Given that most school districts obtained voter approval to retain all excess property tax revenue but were required, without legal authority, to subsequently reduce their total program mill levies, can the General Assembly, having already mandated that those school districts reset their total program mill levies to the levels that would have been in effect but for the unauthorized reductions, now require such school districts to: (a) gradually eliminate the temporary property tax credits as provided in House Bill 21-1164; and (b) do so without again obtaining voter approval?

Be It Further Resolved, That the President of the Senate and the

Speaker of the House of Representatives, immediately upon passage of this Joint Resolution, shall transmit to the Clerk of the Colorado Supreme Court a certified copy of this Joint Resolution and a certified copy of the revised version of House Bill 21-1164, and that the Committee on Legal Services is directed to furnish said Court with an adequate number of copies of this Joint Resolution and said bill and shall submit to said Court such further documents and briefs as the Court may require to expedite its procedure in the premises.

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THE SENATE

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